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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Genevieve Tritschler, et al.,

No. CV-21-01825-PHX-SMB

10 Plaintiff,

ORDER

11 v.

12 ICE,

13 Defendant.
14

15 Pending before the Court is Plaintiffs' Complaint. (Doc. 1.) For reasons set forth
16 below, the Court will dismiss the Complaint with leave to amend.

17 **I. BACKGROUND**

18 Plaintiffs' Complaint alleges that "ICE destroyed" their property: specifically, their
19 back door and window. (*Id.* at 6–11.) Although Plaintiffs never explain who they mean
20 by ICE, the Court takes them to mean the U.S. Immigration and Customs Enforcement
21 because there is an administrative tort claim response letter from that agency attached to
22 Plaintiffs' Complaint.¹ Plaintiffs also filed an Application for Leave to Proceed In Forma
23 Pauperis. (Doc. 2.)

24 Plaintiffs filed their Complaint against ICE using a pro se civil case form. (*See*
25 Doc. 1.) Where the form designates the basis for jurisdiction, Plaintiffs checked the federal
26 question box but left blank the diversity of citizenship box. (*Id.* at 3.) However, in the
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28 ¹ If Plaintiffs choose to file an amended complaint, they should list the complete name and
address of the federal agency they are attempting to sue.

1 federal question jurisdiction section, Plaintiffs neglected to “[l]ist the specific federal
 2 statutes, federal treaties, and/or provisions of the United States Constitution that are at issue
 3 in this case.” (*Id.*) Instead, Plaintiffs simply wrote “[p]rotection of our home.” (*Id.*)
 4 Additionally, under the section for pleading diversity jurisdiction, Plaintiffs filled out the
 5 citizenship details for themselves but did not do so for ICE. (*Id.* at 3–4.) Plaintiffs also
 6 neglected to list the amount in controversy or explain why they believed it exceeds
 7 \$75,000. (*Id.* at 4.) In other words, Plaintiffs have not properly pled either federal question
 8 or diversity jurisdiction, as explained below.

9 II. LEGAL STANDARD

10 In pro se filings, the Court must review the complaint to determine whether the
 11 action:

- 12 (i) is frivolous or malicious;
- 13 (ii) fails to state a claim on which relief may be granted; or
- 14 (iii) seeks monetary relief against a defendant who is immune from such relief.

15 See 28 U.S.C. § 1915(e)(2)(B).

16 A complaint is frivolous or fails to state a claim if there is no subject matter
 17 jurisdiction. “[L]ack of subject matter jurisdiction cannot be waived, and the court is under
 18 a continuing duty to dismiss an action whenever it appears that the court lacks jurisdiction.”
 19 *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983); see Fed. R. Civ. P.
 20 12(h)(3). Issues with jurisdiction “may be facial or factual.” *Safe Air for Everyone v.*
 21 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial issue is one where “the allegations
 22 contained in a complaint are insufficient on their face to invoke federal jurisdiction.” *Id.*
 23 In determining whether a facial jurisdictional issue exists, the court “accept[s] the
 24 plaintiff’s allegations as true and draw[s] all reasonable inferences in the plaintiff’s favor”
 25 and then “determines whether the allegations are sufficient as a legal matter to invoke the
 26 court’s jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

27 When a plaintiff does not meet the burden of showing that the court has subject-
 28 matter jurisdiction, the court must dismiss the action. Fed. R. Civ. P. 12(h)(3); see also

1 *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“Because subject-matter jurisdiction
 2 involves a court’s power to hear a case, it can never be forfeited or waived.”). However,
 3 unless it is “‘absolutely clear’ that [a plaintiff] could not cure [a complaint’s] deficiencies
 4 by amendment,” the court will give a plaintiff opportunity to do so. *See Jackson v. Barnes*,
 5 749 F.3d 755, 767 (9th Cir. 2014) (citations omitted); Fed. R. Civ. P. 15(a)(2) (“The court
 6 should freely give leave [to amend] when justice so requires.”).

7 **III. DISCUSSION**

8 **A. Subject-Matter Jurisdiction**

9 Plaintiffs have not properly pled subject-matter jurisdiction—either diversity or
 10 federal question. “Federal courts are courts of limited jurisdiction” and may only hear
 11 cases as authorized by the Constitution or Congress. *Kokkonen v. Guardian Life Ins. Co.*
 12 *of Am.*, 511 U.S. 375, 377 (1994). A court has subject-matter jurisdiction (1) over claims
 13 that “aris[e] under the Constitution, laws, or treaties of the United States” and (2) over
 14 “civil actions where the matter in controversy exceeds the sum or value of \$75,000,
 15 exclusive of interest and costs, and is between” diverse parties. 28 U.S.C. §§ 1331, 1332.
 16 Because our jurisdiction is limited, it is presumed that a cause lies outside of it, and the
 17 burden of establishing jurisdiction is on the party asserting it. *Kokkonen*, 511 U.S. at 377.

18 Plaintiffs indicated that they were pleading federal question jurisdiction by checking
 19 that box on their complaint form, but they never provided the federal statute or
 20 constitutional provision on which their case rests. Thus, they have not met their burden of
 21 establishing federal question jurisdiction. Similarly, Plaintiffs left the diversity jurisdiction
 22 portion of the form incomplete. They filled out their citizenship section but left the
 23 Defendant’s blank, and they never listed the amount in controversy. The only claim for
 24 financial relief that the Court can glean is in the attached documents, which contain a form
 25 seeking \$1,285.87 for damages allegedly incurred by a federal officer—far short of the
 26 more than \$75,000 requirement for diversity jurisdiction.

27 Therefore, Plaintiffs have not properly pled diversity or federal question jurisdiction
 28 and have left the Court without clarity as to what form of subject-matter jurisdiction they

are attempting to plead. Consequently, dismissal is required. Fed. R. Civ. P. 12(h)(3).

B. Leave to Amend

Although there are defects in Plaintiffs' Complaint, "it is not 'absolutely clear' that [they] could not cure [their complaint's] deficiencies by amendment," *Barnes*, 749 F.3d at 767; therefore, the Court will give Plaintiffs the opportunity to do so. *See* Fed. R. Civ. P. 15(a)(2). Plaintiffs' amended complaint must address the deficiencies identified above and should follow the form detailed in Local Rule of Civil Procedure 7.1.

Within thirty (30) days from the date of entry of this Order, Plaintiffs may submit an amended complaint. They must clearly designate on the face of their amended complaint that it is the "First Amended Complaint." If they decide to file an amended complaint, they are reminded that it supersedes the original complaint, *see Lacey v. Maricopa Cty.*, 693 F.3d 896, 925–28 (9th Cir. 2012), and it must be complete in itself and "not incorporate by reference any part of the preceding pleading, including exhibits," LRCiv 15.1.

IV. CONCLUSION

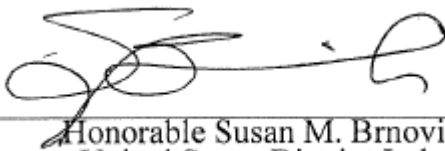
Accordingly,

IT IS ORDERED dismissing Plaintiffs' Complaint, (Doc. 1), with leave to amend.

IT IS FURTHER ORDERED directing Plaintiffs to file an amended complaint with this Court within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED directing the Clerk of Court to terminate this case if Plaintiffs do not file an amended complaint within 30 days of this order.

Dated this 2nd day of November, 2021.



Honorable Susan M. Brnovich
United States District Judge